

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

| | | |
|----------------|---|---------------------------|
| ROBERT GREEN, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Case No. 15-CV-40-NJR-DGW |
| |) | |
| JAMES BELFORD, |) | |
| |) | |
| Defendant. |) | |

MEMORANDUM AND ORDER

ROSENSTENGEL, District Judge:

This matter is before the Court *sua sponte* for case management purposes. Robert Green filed a civil rights action under 42 U.S.C. § 1983 and a motion to proceed *in forma pauperis* (“IFP”) on December 10, 2014 (case number 14-cv-1364-NJR-DGW, Doc. 1). At that time, Green was incarcerated at Shawnee Correctional Center.

Following the Court’s threshold review of the complaint pursuant to 28 U.S.C. § 1915A, Green’s claims against James Belford were severed into a new case with the above-captioned case number (Doc. 1). The IFP motion that Green filed in the original matter was also filed in the new case (Docs. 1, 3). Before the Court ruled on the IFP motion in the new case, Green was released from prison (*see* Doc. 6). Because he was incarcerated at the time he filed his original complaint and at the time the new case was opened, however, the Prison Litigation Reform Act and the prisoner provisions of 28 U.S.C. § 1915 still applied. *See Robbins v. Switzer*, 104 F.3d 895, 897 (7th Cir. 1997).

Based on the information in Green's trust fund account statement, the Court assessed an initial partial filing fee of \$51.22 in this case (Doc. 10). 28 U.S.C. § 1915(b). Green was ordered to pay the initial partial filing fee within fourteen days (Doc. 10). He was further ordered to pay the remaining balance of the \$350 filing fee (\$298.78) or file an updated IFP motion with regard to the balance within fourteen days (Doc. 10). He was warned that failure to comply with the Court's Order would result in the dismissal of his case (Doc. 10).

Green filed an updated IFP motion with respect to the balance of the filing fee (Doc. 11), but he did not pay the initial partial filing fee. He made no attempt to explain why he did not pay the fee, nor did he seek additional time to do so. Instead of dismissing his case, the Court gave Green another opportunity. He was ordered to show cause why the case should not be dismissed for failure to pay the partial filing fee (Doc. 15). He was warned that his case would be dismissed if he did not pay or respond by June 4, 2015 (Doc. 15). Green did not respond to the show cause order by the deadline.

A prisoner's release from confinement does not eliminate his obligation to pay the initial partial filing fee that, according to the trust account statements, he could have paid at the time he filed the action. *Lucien v. DeTella*, 141 F.3d 773, 776 (7th Cir. 1998); *Robbins v. Switzer*, 104 F.3d 895, 899 (7th Cir. 1997). If a prisoner fails to pay the initial partial filing fee, his case will be dismissed. *Robbins*, 104 F.3d at 899 ("A dismissal for failure to pay that sum would not offend § 1915(b)(4); it would simply enforce the obligation created by § 1915(b)(1)."). See also *Blakes v. Foutch*, 600 Fed. Appx. 1004, 1005–06 (7th Cir. 2015) (affirming dismissal of case for failure to comply with Court's order to

pay initial partial filing fee); *Bates v. Thompson*, 234 F.3d 1272 (7th Cir. 2000) (same). “Before dismissing a suit for nonpayment, however, a district court must give a prisoner the opportunity to explain his failure to pay and determine if the failure was the prisoner’s fault.” *Blakes*, 600 Fed. Appx. at 1005 (citing *Sultan v. Fenoglio*, 775 F.3d 888, 890 (7th Cir. 2015)); *Thomas v. Butts*, 745 F.3d 309, 312 (7th Cir. 2014).

The Court has given Green amply opportunity to pay the partial filing fee or explain why he is unable to do so. But Green chose to ignore the Court’s orders, and he took no action despite being warned of the consequences. Without any information from Green, the Court cannot simply assume that he was not at fault in failing to pay the partial filing fee. Accordingly, this case is **DISMISSED without prejudice** for failure to pay the initial partial filing fee.

IT IS SO ORDERED.

DATED: June 8, 2015

s/ Nancy J. Rosenstengel
NANCY J. ROSENSTENGEL
United States District Judge